UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

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BOBBY LEE CUTTS, JR.,

: CASE NO. 5:11-CV-00991

Petitioner,

:

vs. :

OPINION & ORDER [Resolving Docs. 1, 13]

KEITH SMITH,

:

Respondent.

:

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## JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On May 17, 2011, Petitioner Bobby Cutts, Jr. filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On September 7, 2011, the Government opposed Cutts's petition. Under Local Rule 3.1, the matter was referred to Magistrate Judge Kathleen B. Burke. On May 2, 2013, Magistrate Judge Burke issued a Report and Recommendation that recommended this Court deny Cutts's petition.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection.<sup>4/</sup>
Parties must file any objections to a Report and Recommendation within fourteen days of service.<sup>5/</sup>
Failure to object within this time waives a party's right to appeal the district court's judgment.<sup>6/</sup>

 $<sup>\</sup>frac{1}{2}$ Doc. <u>1</u>.

 $<sup>\</sup>frac{2}{2}$ Doc. 8.

 $<sup>\</sup>frac{3}{2}$ Doc. 13.

<sup>4/28</sup> U.S.C. § 636(b)(1)(C).

 $<sup>\</sup>frac{5}{Id}$ .; Fed. R. Civ. P. 72(b)(2).

<sup>6/</sup>Thomas v. Arn, 474 U.S. 140, 145 (1985); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

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Gwin, J.

Absent objection, a district court may adopt the magistrate judge's report without review.

In this case, Cutts has not filed objections to the Report & Recommendation. Moreover,

having conducted its own review of the record and the parties' briefs, the Court agrees with the

recommendation of Magistrate Judge Burke that the petition should be dismissed.

Accordingly, the Court ADOPTS Magistrate Judge Burke's Report and Recommendation

and incorporates it fully herein by reference, and **DENIES** Cutts's petition for a writ of habeas

corpus. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

decision could not be taken in good faith, and no basis exists upon which to issue a certificate of

appealability.8/

IT IS SO ORDERED.

Dated: May 17, 2013

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

<sup>7</sup>/See *Thomas*, 474 U.S. at 149.

8/28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

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